IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 7778 OF 2005

M/s S.S. Trading & Ors. ..Petitioners.
V/s
Trambak Hatcheries Pvt. Ltd.
& Anr. ..Respondents.

Shri G.S. Godbole for the petitioners.
Shri S.t. Karandikar for respondent No.1.

CORAM : S.B. MHASE, J.
DATE : 18TH APRIL, 2006.

P.C.

. Heard.

2. Rule, returnable forthwith.

3. Order dated 12/7/2005 passed below Exh.76 in Special Suit No.289/2000 passed by the Civil Judge,S.D. Nasik, is under challenge. The Special Civil Suit No.289/2000 has been filed by the respondent for recovery of the amount of Rs. 2,31,112/-. In the said suit the present petitioners are the defendants. The petitioners have filed their written Statement. The said written statement has been filed on or about 16/1/2002. On 4/8/2003 the application Exh.36 was moved by the petitioner/defendants for amendment in the

written statement. On that application the trial Court directed the petitioners to produce the voucher bills referred in the application. The order was passed on 4/2/2005. It requires to be noted that from 4/8/2003 to 4/2/2005 the application was unattended by the trial Court. However, in view of the order passed on 4/2/2005 the petitioner produced the documents as directed by the trial Court along with the application dated 12/7/2005 and requested that the amendment application be allowed. That application dated 12/7/2005 by which the documents were produced and request to decide application Exh.36 was made is an application Exh.76. On that application, Exh. 76, the order has been passed to the effect that "already my learned predecessor has passed order below Exh. 36. This application has been filed in order to get adjournment for cross-examination. Rejected". Therefore, the present petition.

4. Needless to say, the order itself shows non application of mind by the Civil Judge, S.D., Nasik. It appears that the trial Judge has not yet look into the order below Exh. 36. It is pertinent to note that below Exh.36 the petitioner was directed to file vouchers and the bills which were referred to in the

amendment application and the application was not decided on merits. It is further to be noted that in an application Exh.76 it has been eloquently stated that in compliance of order passed by the Court, the documents are being produced and therefore the prayer is made to pass appropriate order on Exh.36. Therefore, the trial Court was under an obligation to decide application Exh.36. It appears that while application Exh.36 was pending the Court did not wait and examination-in-chief of the plaintiff-respondent was recorded and under these circumstances the prayer made in Exh.76 was treated as an attempt to adjourn the cross-examination. It was for the trial Court to decide the application chronologically as and when they are filed. It is not known as to why the application Exh. 36 was kept pending from 4/8/2003 to 4/2/2005 and why without deciding the said application the Court proceeded for hearing the suit. Let the matter as it is, the Court was under an obligation to decide the said application. In any circumstances the order passed below Exh.76 from any angle, is absolutely bad exercise on the part of the Civil Judge, S.D., Nasik and not in consonance with the judicial discipline. The Court is under an obligation to see that not only the justice is done but it must be

shown to have been done. However, since orders are passed, as referred above without application of mind the citizens lose the confidence in the justice delivery system itself. Therefore, the order passed below Exh.76 in Special Suit No. 289/2000 is hereby quashed and set aside. However, Since Exh.36 is not decided, it is hereby directed that the trial Court shall decide as to whether application Exh.36 is to be allowed or not considering it on its own merits after hearing both the sides.

5. Rule made absolute in above terms. It is further made clear, if application Exh.36 is allowed, further, opportunity may be offered to both sides in accordance of Code of Civil Procedure. If the application is rejected the petitioner-original defendant be allowed to cross-examine the petitioner.

[S.B. MHASE, J.]